

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

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**SENATE BILL 195
PROPOSED COMMITTEE SUBSTITUTE S195-PCS35260-SU-5**

Short Title: Motor Vehicle Service Agreement Amendments.

(Public)

Sponsors:

Referred to:

March 9, 2015

A BILL TO BE ENTITLED
AN ACT TO PROVIDE A LEGAL FRAMEWORK FOR THE SALE AND REGULATION
OF MOTOR VEHICLE ANCILLARY PRODUCT CONTRACTS IN NORTH
CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-370 reads as rewritten:

"§ 66-370. Motor vehicle service agreement companies.

(a) This section applies to all motor vehicle service agreement companies soliciting business in this State, but it does not apply to maintenance agreements, performance guarantees, warranties, or motor vehicle service agreements made by

(1) A manufacturer,

(2) A distributor, or

(3) A subsidiary or affiliate of a manufacturer or a distributor, where fifty-one percent (51%) or more of the subsidiary or affiliate is owned directly or indirectly by

a. The manufacturer,

b. The distributor, or

c. The common owner of fifty-one percent (51%) or more of the manufacturer or distributor

in connection with the sale of motor vehicles. This section does not apply to any motor vehicle dealer licensed to do business in this State (i) whose primary business is the retail sale and service of motor vehicles; (ii) who makes and administers its own service agreements with or without association with a third-party administrator or who makes its own service agreements in association with a manufacturer, distributor, or their subsidiaries or affiliates; and (iii) whose service agreements cover only vehicles sold by the dealer to its retail customer; provided that the dealer complies with G.S. 66-372 and G.S. 66-373. A motor vehicle dealer who sells a motor vehicle service agreement to a consumer, as defined in 15 U.S.C. § 2301(3), is not deemed to have made a written warranty to the consumer with respect to the motor vehicle sold or to have entered into a service contract with the consumer that applies to the motor vehicle, as provided in 15 U.S.C. § 2308(a), if: (i) the motor vehicle dealer acts as a mere agent of a third party in selling the motor vehicle service agreement; and (ii) the motor vehicle dealer would, after the sale of the motor vehicle service agreement, have no further obligation under the motor vehicle



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1 service agreement to the consumer to service or repair the vehicle sold to the
2 consumer at or within 90 days before the dealer sold the motor vehicle
3 service agreement to the consumer.

4 (b) The following definitions apply in this section and in G.S. 66-371, 66-372, and
5 66-373:

6 (1) Ancillary protection product. – A protective chemical, substance, device, or
7 system that (i) is installed on or applied to a motor vehicle, (ii) is designed to
8 prevent loss or damage to a motor vehicle from a specific cause, and (iii)
9 includes an ancillary protection product warranty. For purposes of this
10 section, the term "ancillary protection product" shall include, but not be
11 limited to, protective chemicals, alarm systems, body part marking products,
12 steering locks, window etch products, pedal and ignition locks, fuel and
13 ignition kill switches, and electronic, radio, and satellite tracking devices.
14 "Ancillary protection product" does not include fuel additives, oil additives,
15 or other chemical products applied to the engine, transmission, or fuel
16 system of a motor vehicle.

17 (1a) Ancillary protection product warranty. – A written agreement by a warrantor
18 that provides if the ancillary protection product fails to prevent loss or
19 damage to a motor vehicle from a specific cause, that the warrantor will pay
20 to or on behalf of the warranty holder specified incidental costs, which may
21 include without limitation insurance policy deductibles, rental vehicle
22 charges, the difference between the actual value of the stolen vehicle at the
23 time of theft and the cost of a replacement vehicle, sales taxes, registration
24 fees, transaction fees, and mechanical inspection fees. Incidental costs may
25 be reimbursed in either a fixed amount specified in the ancillary protection
26 product warranty or by use of a formula itemizing specific incidental costs
27 incurred by the warranty holder.

28 ~~(1b)~~ Authorized insurer. – An insurance company authorized to write liability
29 insurance under Articles 7, 16, 21, or 22 of Chapter 58 of the General
30 Statutes.

31 (2) Distributor. – Defined in G.S. 20-286(3).

32 (3) Licensed insurer. – An insurance company licensed to write liability
33 insurance under Article 7 or 16 of Chapter 58 of the General Statutes.

34 (4) Motor vehicle. – Defined in G.S. 20-4.01(23), but also including mopeds as
35 defined in G.S. 20-4.01(27)d1.

36 (4a) Motor vehicle failure. – The failure of a mechanical or other component part
37 of the motor vehicle arising out of the ownership, operation, or use of the
38 vehicle.

39 (5) Motor vehicle service agreement. –

40 a. Any contract or agreement (i) indemnifying the motor vehicle service
41 agreement holder against loss caused by ~~failure, arising out of the~~
42 ~~ownership, operation, or use of a motor vehicle, of a mechanical or~~
43 ~~other component part of the motor vehicle~~ a motor vehicle failure
44 that is listed in the ~~agreement~~ agreement or (ii) providing for the repair of
45 a motor vehicle failure that is listed in the agreement.

46 b. A motor vehicle service agreement includes a contract or agreement
47 to perform or to indemnify the holder of the motor vehicle service
48 agreement for performance of any of the following services:

49 1. The repair or replacement of tires or wheels on a motor
50 vehicle damaged as a result of coming into contact with road
51 hazards.

- 1 2. The removal of dents, dings, or creases on a motor vehicle
- 2 that can be repaired using the process of paintless dent
- 3 removal without affecting the existing paint or finish and
- 4 without replacing vehicle body panels, sanding, bonding, or
- 5 painting.
- 6 3. The repair of chips or cracks in or the replacement of motor
- 7 vehicle windshields as a result of damage caused by road
- 8 hazards.
- 9 4. The replacement of a motor vehicle key or key-fob in the
- 10 event that the key or key-fob becomes inoperable or is lost or
- 11 stolen.
- 12 5. Other services which may be approved by the Commissioner
- 13 of Insurance, if not inconsistent with other provisions of this
- 14 Article.
- 15 c. The term A motor vehicle service agreement does not mean include
- 16 (i) a contract or agreement guaranteeing the performance of parts or
- 17 lubricants manufactured or distributed by the guarantor and sold for
- 18 use in connection with a motor vehicle where no additional
- 19 consideration is paid or given to the guarantor for the contract or
- 20 agreement beyond the price of the parts or ~~lubricants~~ lubricants; (ii)
- 21 ancillary protection product warranties; or (iii) coverage for the
- 22 repair or replacement of damage to the interior surfaces of a vehicle,
- 23 or for repair or replacement of damage to the exterior paint or finish
- 24 of a vehicle; provided, however, that such coverage may be offered
- 25 in connection with the sale of an ancillary protection product as
- 26 defined in this section.
- 27 (6) Motor vehicle service agreement company. – Any person that issues motor
- 28 vehicle service agreements and that is not a licensed insurer.
- 29 "

SECTION 2. G.S. 58-1-15 reads as rewritten:

"§ 58-1-15. Warranties by manufacturers, distributors, or sellers of goods or services.

32 ...

33 (b) Any ~~warranty~~ warranty, including an ancillary protection product warranty as

34 defined by G.S. 66-370(b)(1a), made solely by a manufacturer, distributor, or seller of goods or

35 services without charge, or an extended warranty offered as an option and made solely by a

36 manufacturer, distributor, or seller of goods or services for charge, that guarantees indemnity

37 for defective parts, mechanical or electrical breakdown, labor, or any other remedial measure,

38 including replacement of goods or repetition of services, shall not be a contract of insurance

39 under Articles 1 through 64 of this Chapter; however, service agreements on motor vehicles are

40 governed by G.S. 66-370, 66-372, and 66-373. Service agreements on home appliances are

41 governed by G.S. 66-371, 66-372, and 66-373.

42 (b1) Service agreements on home appliances or on motor vehicles offered in compliance

43 with Article 43 of Chapter 66 of the General Statutes shall not be contracts of insurance and

44 shall be exempt from all provisions of this Chapter unless otherwise expressly provided.

45 "

SECTION 3. G.S. 66-372(e)(2) reads as rewritten:

46 "(2) With respect to a motor vehicle service agreement as defined in

47 ~~G.S. 66-370(b)(1),~~ G.S. 66-370, provide for a right of assignability by the

48 consumer to a subsequent purchaser before expiration of coverage if the

49 subsequent purchaser meets the same criteria for motor vehicle service

50 agreement acceptability as the original purchaser; and"

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SECTION 4. This act becomes effective July 1, 2015.